THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M.No.8733-C of 2006 &
R.S.A. No.3505 of 2006

Date of Decision: 25 -9 -2006

State of Punjab and others **.....Appellants**

v.

K.C.Duggal **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.G.C.Gupta, DAG, Punjab
for the appellants.

Mr.Tejinder Singh Gujral, Advocate
for the caveator- respondent.

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P.S.PATWALIA, J. (Oral)

The present regular second appeal has been filed by the State of Punjab against concurrent findings decreeing the suit of the plaintiff. The appeal suffers from a delay of 76 days, for condonation of which the appellant has filed C.M.No.8733-C of 2006.

The plaintiff had filed the suit challenging order dated 19.12.1997 imposing penalty of compulsory retirement. The plaintiff had challenged the departmental enquiry on the ground that he was not supplied with essential documents which were relied upon by the defendants. He further contended that he had not been supplied a copy of the advice rendered by the Punjab Public Service Commission on the basis of which order of compulsory retirement had been passed. He relied upon Rule 14 of the Punjab Civil Services (Punishment

and Appeal) Rules, 1970 which made it mandatory to supply a copy of the advice to the Government servant. He also relied upon a judgment of the Hon'ble Supreme Court in **State Bank of India v. D.C.Aggarwal, 1993(1) SCT 225.** It was his further contention that during the course of the departmental enquiry he was wrongly proceeded against ex parte and no pre-emptory notice was served upon him. It was further his contention that the impugned order of penalty was imposed without there being any evidence to substantiate the charges.

The State Government, however, did not produce the enquiry file in evidence before the trial Court. Relying on the rules aforementioned and the fact that the enquiry file had been withheld by the State Government, the trial Court came to the conclusion that the enquiry proceedings against the plaintiff were not fair. The relevant observations of the trial Court are as hereunder:-

> "In support of his argument, the plff. Relied upon the authority of State Bank of India vs. D.C.Aggarwal 1993(1) S.C.T. 225 in which it was held that "State Bank of India (Supervisory staff) Service Rules, Rule 50(5) – Natural Justice- Disciplinary proceedings against Bank employee – Disciplinary Authority cannot act on the basis of material which is neither supplied nor shown to the delinquent – Reliance placed on material not only irrelevant but could not have been looked into – order liable to be quashed." It is further alleged by the plff. that the contention of the deft. in para no.7 (c) that the plff. did not ask for the document speak volumes about the conduct of the defts. and as such plff. was denied the opportunity of fair trial during the departmental proceedings in violation of principles of natural justice, rules of procedural justice and fair play. Another contention put forth by counsel for the plff. is that enquiry proceedings were conducted in gross violation of PCS (Punishment & Appeal) Rules and as the plff. was proceeded against exparte

while no pre-emptory notice was served on the plff. before conducting the exparte proceedings and that it was the case of no evidence. Ld. counsel for the plff. has further argued that defts. no.1 and 3 had not cared to produce the complete file relating to the departmental proceedings on the basis of which impugned order was passed and have deliberately with-held but despite being given notice thereof by the plff. and as this file was utmost necessary to prove the contention of the plff. that this was the case of no evidence against the plff. and that this important peace of evidence was with-held from the court which was utmost necessary to the decision of the instant case and that vide order dtd. 27.8.02 by Ld. Predecessor of this court whereby the adverse inference has already been drawn against the deft. for not producing the complete departmental proceedings file and that a safe inference can be drawn in these circumstances that the alleged subsequent enquiry was conducted at the back of the plff. and there was no evidence at all against the plff. on the basis of impugned order was passed. From the careful perusal of the file, I agree with the contention that the plff.'s case is that departmental proceedings were conducted on the basis of no evidence against the plff. and by not producing the complete file on record shows the utter laxity and recklessness on the part of the deft. and there seems no reason why the adverse inference should not be drawn against the defts. as they have not controverted this fact that the plff. could produce such documents otherwise i.e. the complete enquiry file conducted by defts. no.1 and 3 which pertained to exparte proceedings against the plaintiff from any other source and as the plaintiffs have proved on record by service of notice u/o 12 rule 8 CPC and under order 11 rule 14 CPC Ex.P9 and Ex.P10 and

> postal receipts Ex.P3 to Ex.P7. Hence, I am of the view that in the present circumstances, the defendant utterly fails to rebut the contention of the plaintiff that the departmental proceedings were undertaken on the basis of no evidence by not producing the departmental proceedings on record."

On the basis of the aforementioned while the order of compulsory retirement was held to be illegal and was set aside, however, salary for the period when the plaintiff remained out of service was denied to him.

A first appeal was filed by the State as also by the plaintiff.

The appeal filed by the State had been rejected while the appeal filed by the plaintiff was allowed and he has been awarded full back wages.

I have heard learned counsel for the appellant and learned counsel appearing for the caveator-respondent.

Learned counsel for the appellants has primarily contended that once the trial Court has exercised discretion in not allowing back wages to the plaintiff, the first Appellate Court should not have interfered and set aside the order of compulsory retirement. I do not find any merit in this contention. Once a clear finding has been recorded that a departmental enquiry was conducted in violation of the principles of natural justice and also it has been found by the trial Court that it was a case of no evidence, the natural consequence would be to set aside the order of compulsory retirement and full back wages were rightly granted to the plaintiff in the present case. This is all the more so since the reasons best known to the State Government, it did not produce the enquiry file. For this proposition, the first Appellate Court has rightly relied upon the judgment of the Hon'ble Supreme Court in **M/s Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s Hindustan Tin Works Pvt. Ltd. and others**, AIR 1979 SC 75.

For the reasons aforementioned, I find no merit in this regular second appeal. Consequently, the appeal and the application seeking condonation of

delay are dismissed in limine.

(P.S.PATWALIA)
September 25, 2006. **JUDGE**

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